

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

Regulatory Information Management Services

October 6, 2009

Isaac B. Arnsdorf (b)(6)

(b)(6)

RE: FOIA Request No. 09-01956-F

Dear Mr. Arnsdorf:

This letter is in response to your e-mail request dated September 23, 2009, requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Your request was received in this office on September 25, 2009. Your request has been assigned case number 09-01956-F and assigned to the appropriate office within the Department to search for documents that may be responsive to your request. A copy of your request is attached.

You have also asked for a waiver of all fees associated with processing your request. You will receive the records that you requested, if they exist, but your request for a fee waiver is denied.

The Department has concluded that you have failed to provide sufficient information to demonstrate your entitlement to a waiver of processing fees. More specifically, justification has not been provided to explain how copies of the requested records would contribute any new significant information to the public's understanding of the Department's operations. You have also not provided any evidence demonstrating the public interest in the documents. Accordingly, your request is determined to be an "all other" request and, therefore, subject to search fees after the first 2 hours, and duplication fees after the first 100 pages or \$3.00 per CD.

Attached is general information of the FOIA Fees and Waivers. Should you still wish to claim that the Department's processing fees should be waived, you must provide more specific and detailed evidence to support your claims under each statutory requirement described in our FOIA regulations (available on the internet at: http://www.access.gpo.gov/nara/cfr/waisidx_05/34cfr5_05.html) and outlined in the attachment to this letter.

You have the right to appeal this fee waiver denial within 30 days of the date of this letter. Your written appeal should be accompanied by a copy of your initial letter of request and this denial letter, and should contain any evidence or argument you wish the Department to consider in making an administrative determination on your appeal.

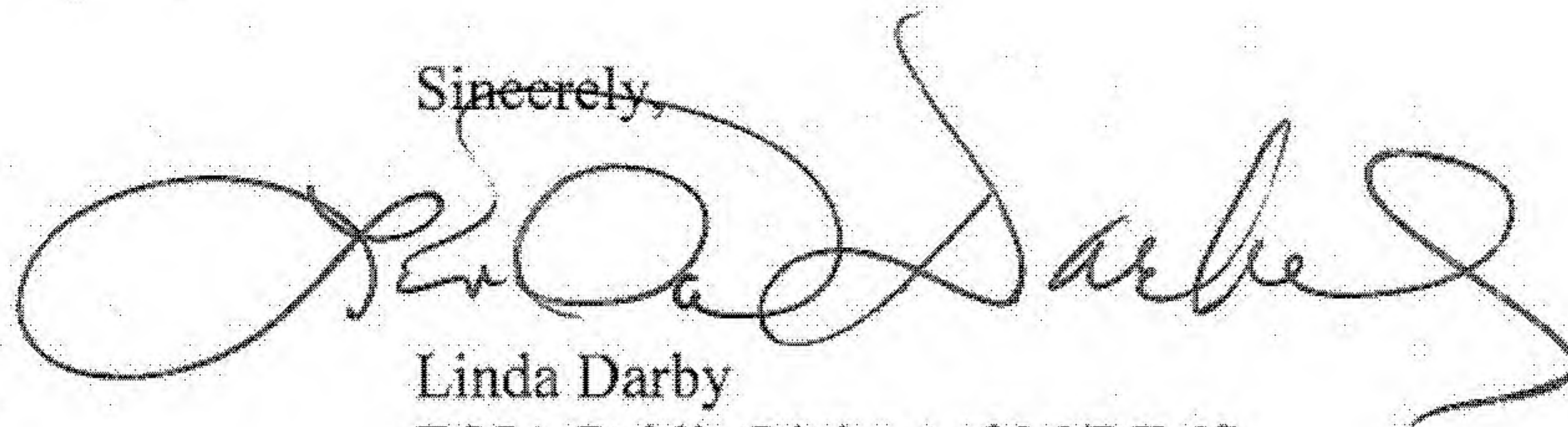
Appeal Address:

U.S. Department of Education
Office of Management
400 Maryland Avenue, SW, LBJ 2W311
ATTN: FOIA Appeals Office
Washington, DC 20202-4500

Or, you may complete the online FOIA appeal form, located at:
http://www.ed.gov/policy/gen/leg/foia/foia_appeal_form_1.html.

If you have any questions, or would like the original signed copy of this letter, please contact
the FOIA Requester Service Center at (202) 401-8365 or via e-mail at
EDFOIAManager@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Darby", written over a horizontal line.

Linda Darby
FOIA Public Liaison, OM/RIMS

Attachments

ED FOIA Manager

FS
09-01956-2

From: EDFOIAManager@ed.gov
Sent: Wednesday, September 23, 2009 3:04 PM
Subject: FOIA Request Form Submission

(b)(6)

September 23, 2009

U.S. Department of Education
Office of the Chief Information Officer
550 12th Street, SW, PCP, 9th Floor, Room 9148
Washington, DC 20202-4750

Dear FOIA Officer:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me:

I would like to see all records and files associated with the DOE investigation of Yale University's compliance with the Clery Act.

In order to help to determine my status to assess fees, you should know that I am a representative of the news media/press and this request is made as part of news gathering and not for commercial use.

The maximum dollar amount I am willing to pay for this request is \$100. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Specific explanation for waiver of fees: I am a reporter for the Yale Daily News, which is a non-profit organization.

Thank you for your consideration of this request.

Sincerely,

Isaac B Arnsdorf

(b)(6)

Freedom of Information Act
FEES AND FEE WAIVERS
(General Information)

The FOIA authorizes agencies to recover from requesters certain costs associated with processing requests made under the Act. 5 U.S.C. § 552(a)(4)(A)(i) and (ii). The statute further provides for such fees to be waived in whole or in part where “disclosure of the information [requested] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii)(2000); 34 C.F.R. § 5.64.

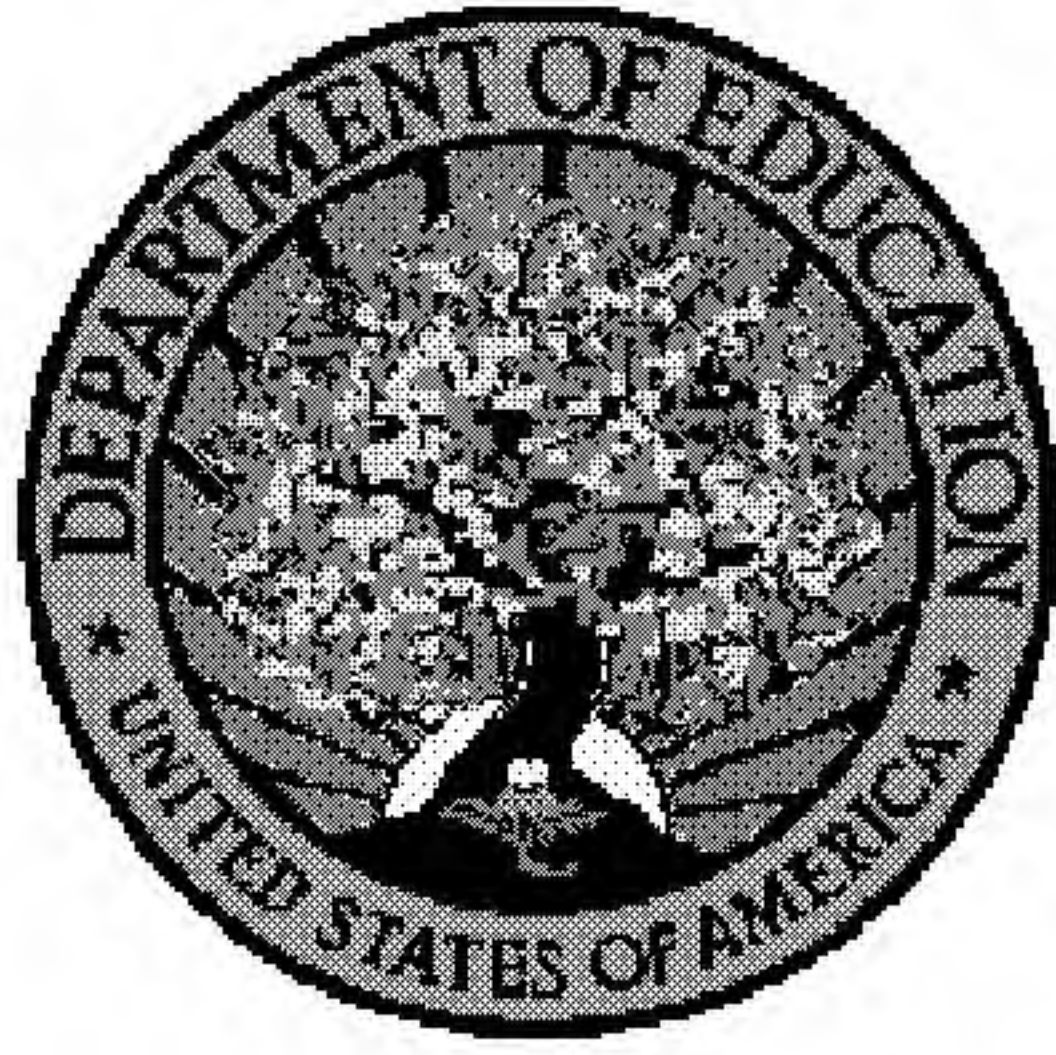
To qualify for a fee waiver, requesters must meet two statutory requirements. First, the requester must support the request with evidence that establishes that disclosure of the information sought is in the public interest. In order to determine this, the Department must consider the following four factors in order:

1. The subject matter of the requested records themselves must specifically concern identifiable “operations or activities of the government”;
2. In order for the disclosure to “likely contribute” to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request;
3. The disclosure must contribute to the “understanding of the public at large,” as opposed to that of the individual requester or a narrow segment of interested persons. With regard to this element, requesters should address with particularity and in detail the requester’s subject matter expertise and intentions, ability, and methods of disseminating information to the public; and
4. The disclosure must “contribute significantly” to public understanding of government operations or activities.

Requesters must meet all four elements of the public interest test outlined above to satisfy this first statutory requirement for a fee waiver. See Judicial Watch, Inc. v. Department of Justice, No. 03-5093, 2004 WL 980826 (D.C. Cir. May 7, 2004).

If the first statutory requirement is met, the Department will then also determine whether the “disclosure of the information . . . is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). To determine whether this second requirement has been satisfied, the Department must consider the following two factors in order:

5. Does the request involve any “commercial interest of the requester” (if not, the requester satisfies the second prong of the statutory fee waiver test); and
6. If so, the agency must balance the requester’s commercial interest against the identified public interest in disclosure for the purpose of ascertaining which is the “primary interest;” a fee waiver or reduction may be granted only where the public interest in disclosure is greater in magnitude than the requester’s commercial interest.



Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-4536

SUBJECT: FOIA 09-01956-F Isaac Arnsdorf

DATE: 09/25/2009

Dear FOIA Coordinator:

A FOIA request has been referred to FSA for action.

FROM: Isaac Arnsdorf

Please provide the following requested items:

All records associated with the Dept. of Education's investigation of Yale University's compliance with the Clery Act. See request for details.

Requested Date:
09/23/2009

Date Received in OM/RIMS:
09/23/2009

MULTI-TRACK TYPE:
Complex

Completion Target Date for FSA:
10/26/2009

****Please note that a copy of the initial request is located and can be viewed in FOIAXpress under the correspondence log for this case.*

ADDITIONAL NOTES:

Thank you,

FOIA Service Center

Notes: 09-1956-F

Related to case # 09-00308-F

2/4/10: Assigned to EC as primary to coordinate getting the responsive docs from FSA, uploaded and redacted in FX. CP

8/2/2010: Attached folder to Review Log. Changed AO from FSA to OM-RIMS. Notified EC. TK

From: Goldsmith, Elizabeth
Sent: Tuesday, February 16, 2010 11:41 AM
To: Cook, Elise
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Nope - it's all hard copy

From: Cook, Elise
Sent: Tuesday, February 16, 2010 10:48 AM
To: Goldsmith, Elizabeth
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Elizabeth,

Thanks for having Mike deliver the boxes. Are any portions of the responsive documents electronic?

Elise Cook
FOIA Public Liaison
ED FOIA Service Center
(202) 401-3769
LBJ Room 2W212

From: Goldsmith, Elizabeth
Sent: Tuesday, February 16, 2010 8:48 AM
To: Cook, Elise
Cc: Perry, Camilla
Subject: FW: FOIA# 09-01956 (Isaac Amsdorf)

Elise -

I have 17 emails regarding this case (the most important in regards to withholding release per OGC is below). I can upload the relevant ones (communication between (OGC, POC, etc) to FX but as Mike Colbert is here today, I will have him bring the boxes of responsive documentation to you today.

Thanks again for all your help,

Elizabeth

From: Siegelbaum, Jill
Sent: Thursday, October 29, 2009 11:00 AM
To: Kurtz, Richard; Bannister, Jackie; Goldsmith, Elizabeth; Way, Crystal; Cooper, Countess Clarke; Hobbs, Kisha
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Good morning, all-

(b)(5)

Please let me know if you have any questions.

Jill

From: Kurtz, Richard
Sent: Thursday, October 29, 2009 9:49 AM
To: Bannister, Jackie; Goldsmith, Elizabeth; Way, Crystal; Cooper, Countess Clarke; Hobbs, Kisha
Cc: Siegelbaum, Jill
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)
Importance: High

Good Morning.

This request is for "...all records and files associated with the DOE investigation of Yale University's compliance with the Clery Act."

I have read and understand your concerns as stated below and in various conversations related to ongoing investigations, reviews, etc. I also recognize that this is a variant of the oft-asked question "if we are not going to produce them, why do we have to research/provide them to the FOIA process?"

While I fully anticipate that the draft report and underlying materials will be exempt from disclosure at this time, given the stage of the review, there are responsive documents and we are required to obtain and review them in order to assert the relevant exemption(s) consistent with the statute, regulation, directive, and delegated authority.

(b)(5)

Thanks

Rick

From: Bannister, Jackie
Sent: Thursday, October 29, 2009 9:23 AM
To: Goldsmith, Elizabeth; Way, Crystal
Cc: Cooper, Countess Clarke; Hobbs, Kisha; Kurtz, Richard
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Elizabeth:

The report is in draft. However, I will submit your request to our senior managers.

Jackie

From: Goldsmith, Elizabeth
Sent: Thursday, October 29, 2009 8:49 AM
To: Bannister, Jackie; Way, Crystal
Cc: Cooper, Countess Clarke; Hobbs, Kisha; Kurtz, Richard
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Jackie,

As there is documentation, but the review is still under examination, I still need to have a copy of the report. It will not be released to the requester (it will be withheld in entirety under b(5)), but I can't defend a "no documents" response when there are documents.

Please let me know when they will be available.

Elizabeth

From: Bannister, Jackie
Sent: Wednesday, October 28, 2009 9:04 AM

To: Goldsmith, Elizabeth; Way, Crystal
Cc: Cooper, Countess Clarke; Hobbs, Kisha
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

That is correct - we have nothing to share with the requestor at this time.

From: Goldsmith, Elizabeth
Sent: Wednesday, October 28, 2009 7:43 AM
To: Bannister, Jackie; Way, Crystal
Cc: Cooper, Countess Clarke; Hobbs, Kisha
Subject: RE: FOIA# 09-01956 (Isaac Amsdorf)

Hi Jackie,

I just want to make sure I have this correct: the program review is currently being assessed; a report hasn't been sent to the school and thus no FPRD/PRD letter has been issued. Is that right?

Thanks!

Elizabeth

From: Bannister, Jackie
Sent: Tuesday, October 27, 2009 4:23 PM
To: Goldsmith, Elizabeth; Way, Crystal
Cc: Cooper, Countess Clarke; Hobbs, Kisha
Subject: FOIA# 09-01956 (Isaac Amsdorf)

I just spoke with James Moore of the Philadelphia SPT regarding the above FOIA. There is no information to share with the requestor regarding the Yale University campus security review. The report is being reviewed. However, at this time there is nothing to report. Neither can we say when the report will be available since it is still under review. James reminded me that according to the HEOA, there is a requirement that even if the report were available, we would have to include the school's response to our report for the requestor.

I do apologize for the delay in getting this information to you but James has been out on several reviews and just getting back in the office.

Thanks.

Jackie

From: Goldsmith, Elizabeth
Sent: Monday, August 02, 2010 12:25 PM
To: ED FOIA Manager; Hughes, Kelly
Cc: Pedersen, AnnMarie; Cueva, Maria-Teresa
Subject: RE: Closed FOIAs still assigned to FSA
Attachments: RE: FOIA# 09-01956 (Isaac Amsdorf)

Hi Tony -

I've included the email sent on 2/16 regarding 1956. We're not intending to upload any docs to 1956 as all responsive documents were brought to Elise for uploading and closing.

As for 1158/1159, I'm working on closing (should be done by the end of the week).

Thanks again for all your help,

Elizabeth

From: ED FOIA Manager
Sent: Monday, August 02, 2010 12:15 PM
To: Hughes, Kelly
Cc: Goldsmith, Elizabeth; Pedersen, AnnMarie; Cueva, Maria-Teresa
Subject: RE: Closed FOIAs still assigned to FSA

Kelly, good afternoon. I have provided the latest status of the requests you have cited below. Thank you for providing the detailed feedback - some cases and actions were received from October 2009 through March of 2010, a time of transitioning from one Intake person to 3 people. Some actions were not taken that should have been - but with your help we should be up-to-date on the ones you cited, below. Thanks! - Tony

There are some that remain open:

1. 10-00510-F is closed but the system cannot delete the case and no work can be done on it. We have to manually remember to remove it from our reports, etc. In the meantime, FSA is working with the vendor to see if we can get the entire case deleted from the server. If it shows up again when you do a search, please manually delete it or note that you understand that the computer is preventing it from being removed.
2. 09-01956-F I have changed the Action Office to OM-RIMS. However, in doing a search in Document Manager there are 7 folders associated with this case - but only one has documents (269 pages). Can the '0' folders be deleted or is FSA intending to upload docs into those folders? If there is only one active folder, we'll process it that way. Can you also resend

your 2/16/2010 e-mail - I can't find it in EDFOIAManager.
3. 10-01158-F and 10-01159-F - only 3 of the 32 listed document folders are in Document Manager. The FSA note indicates they are uploaded to the correspondence log, but they don't appear there either. Previously, I believe FSA was asked to put responsive folders into the Review Log of the case and perhaps that is one reason for the delay in removing these cases from FSA. I was going to go ahead and upload them to move this case along - but I can't find them in Document Manager or in the Correspondence Log. Can you help me out?

From: Hughes, Kelly
Sent: Friday, July 23, 2010 2:08 PM
To: ED FOIA Manager
Cc: Goldsmith, Elizabeth; Pedersen, AnnMarie
Subject: Closed FOIAs still assigned to FSA

Good afternoon,

According to the June RIMS report, the following additional FOIA requests are still assigned to FSA even though they were closed either by our office or by RIMS before the end of June.

- * 09-00998-F (Janet McKeown) - CLOSED
- * 09-01025-F (Jeff Webster) - CLOSED
- * 09-01200-F (Rob MacArthur) - OM-RIMS
- * 09-01956-F (Isaac Arnsdorf): documents were sent to Elise Cook for closure on 2/16/10. -
OPEN FOR DOC FSA CLARIFICATION
- * 10-00428-F (Raney Aronson) - CLOSED
- * 10-00510-F (Tim Ranzetta) - COMPUTER GLITCH, CANNOT REMOVE
- * 10-00784-F (Nancy Anderson) - CLOSED
- * 10-01034-F: co-assigned as 10-00077-PA (Henry Schuck): closed 3/30 - OM-RIMS
- * 10-01067-F (Frank Gunseor) - CLOSED
- * 10-01052-F (Kerry Pickett): case is being handled by RIMS, not FSA. - CLOSED
- * 10-01158-F (David Azrin) - WHERE ARE THE 32 FOLDERS?
- * 10-01159-F (David Azrin) - WHERE ARE THE 32 FOLDERS?

Additionally, the following cases were never assigned to FSA but are listed on the report as overdue.

- * 10-00230-F (Heather Ehmke) - ASSIGNED
- * 10-00426-F (Elena Ackel) - CLOSED
- * 10-00461-F (Alvin Baird) - CLOSED
- * 10-00517-F (Maureen Linke) - ASSIGNED
- * 10-00853-F (Stan Freeman) - ASSIGNED

If these cases could be removed and those changes reflected in the July report, we would really appreciate it.

Thank you,

Kelly Hughes